NADESON v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) August 27, 1965]

[Penang — Criminal Appeal No. 13 of 1965]

Criminal Law and Procedure — Police supervisee — Failure to report "change of residence" — Plea of guilty — Failure to record facts — Criminal Procedure Code (Cap. 21), ss. 13(1)(c) and 14(b).

Criminal Law and Procedure — Charge — Charge not sufficiently precise — Pleading guilty to.

The accused who was a police supervisee was charged under sections 13(1)(c) and 14(b) of the Criminal Procedure Code for failure to report a change of residence. It was alleged in the charge that on February 13, 1965, he failed to report his change of residence from Butterworth to Krian. He pleaded guilty and the magistrate merely recorded "Facts as in charge" and convicted the accused and sentenced him to six months' imprisonment.

Held: (1) learned magistrate should have recorded a statement of the facts and because of his failure to do so it was impossible for the appellate court to form any opinion as to whether an offence was disclosed;

(2) on the charge and the facts recorded there was no evidence of intention to effect a transfer of residence and therefore the conviction must be set aside.

Case referred to:—

(1) *Tukiran bin Taib* v. *Public Prosecutor* [1955] M.L.J. 24.

CRIMINAL APPEAL.

Appellant in person.

Wan Ismail bin Wan Mohamed Salleh (Deputy Public Prosecutor) for respondent.

Ong Hock Sim J.: The accused pleaded guilty in the magistrate's court at Butterworth on the following charge:—

"You are charged that you being a police supervisee for a period of 12 months from 10.11.64 to 10.11.65 and being required to notify any change of residence to the O.C.P.D., Butterworth which you were leaving and to the O.C.P.D., Krian, Perak, into which you went to reside, did, on or about the 13th day of February, 1965, at 10.00 a.m. fail to report your change of residence from Butterworth District to Krian District and thereby committed an offence under section 13(1)(c) and punishable under section 14(b) of the Criminal Procedure Code, Cap. 21 (S.S.)",

and was duly convicted and sentenced to a term of 6 months' imprisonment consecutive to any being served by him.

The accused appeals against the sentence in so far as it is to be consecutive to a term of one year's imprisonment he is presently serving. Normally as is provided by section 278 of the Criminal Procedure Code, every sentence of imprisonment shall take effect from the date on which the same was passed unless the court otherwise directs. In the case however of a person presently undergoing a sentence of imprisonment who is sentenced to imprisonment, such imprisonment shall commence either immediately or at the expiration of the imprisonment to which he has been previously sentenced as the court awarding the sentence directs as is provided by section 288 of the Code. The learned magistrate has so directed and I should not interfere unless in so doing he has erred in principle. I am satisfied that the learned magistrate was justified in making such order.

However the learned magistrate has omitted to record a statement of the facts, being content to note merely "facts as in charge". This is not a practice to be encouraged and I would advise the learned magistrate to read the case of *Tukiran bin Taib* v. *Public Prosecutor* [1] on the duty of a magistrate on a plea of guilty.

I now turn to the unsatisfactory form in which the charge is framed. In my view a person subject to police supervision is required in the words of paragraph (c) of subsection (1) of section 13 of the Criminal Procedure Code

"whenever he changes his residence within the States from one police division to another, to notify such change of residence to the officer in charge of the police division which he is leaving and to the officer in charge of the police division into which he goes to reside".

The charge however refers to a failure to report to the O.C.P.D., Butterworth, and to the O.C.P.D., Krian, on the 13th day of February, 1965, at 10 a.m. No facts have been given where the accused had previously resided at Butterworth nor where he had taken up residence in Krian. I have the impression since a date was given that the accused was found to be in Krian District and not in Butterworth on the date in question. That does not amount to a "change of residence" which he is required to notify. I am fortified in this conclusion by an amendment to section 14 of the Criminal Procedure Code of Singapore where a new paragraph (f) reads:—

"(f) if he *intends to be absent* from his last notified residence for more than forty-eight hours *without changing his place of residence*, personally present himself and notify such intention, the place to which he intends to go and the period of his intended absence to the officer in charge of the police division in which such residence is situated."

There must, therefore, be some positive evidence of intention to effect a transfer of residence from one place to another. This is not a case of an order under the Restricted Residence Enactment where the restrictee is not permitted to leave his district without permission. If the accused had in fact moved to Krian District and remained there in excess of forty-eight hours, he could have been charged for an offence under section 14(a) of the Criminal Procedure Code. The magistrate's failure to record the facts has made it impossible for the appellate court to form any opinion whether an offence is disclosed. The charge in my view is not sufficiently precise and I very much doubt that the accused understood what he was pleading guilty to. I therefore quash the conviction and sentence. I see no reason to order a fresh trial.

Conviction and sentence quashed.

BRABAKARAN v. PUBLIC PROSECUTOR

[F.C. (Ong Ag.C.J. (Malaya), Ismail Khan and McIntyre JJ.) September 17, 1965]

[Ipoh — Federal Court Criminal Appeal No. 40 of 1965]

Penal Code, s. 376 — Rape — Girl below statutory age of consent — Corroboration — Sentence.

The appellant was found guilty of rape of his sister-in-law, a girl under the age of 14 years and sentenced to three years' imprisonment. He appealed.

Held: on the facts the appellant was rightly convicted but as in this case no violence was resorted to by the appellant to overcome resistance and therefore he would have not committed any offence if the girl had been a little older, the sentence of three years was excessive and should be reduced to 18 months' imprisonment.

FEDERAL COURT.

V. Jeyaratnam for the appellant.

Syed Hassan Aljeffri (Deputy Public Prosecutor) for the respondent.

Ong Ag.C.J. (Malaya): In this case the appellant was convicted of rape of his sister-in-law, a girl under the age of 14 years, and sentenced to three years' imprisonment. Whatever difficulties might have presented themselves at the commencement of the trial were resolved by the learned trial judge, who amended the charge from a date in December, 1963, to a date in May, 1964. In a carefully considered judgment, he had given the reasons why he was satisfied with the evidence of the girl, and he also expressly referred to the need to seek corroboration, which he in fact found.

The girl in question, being under the age of 14, the statutory age of consent in this type of cases, it is clear beyond question that, whoever had intercourse with her, had committed the offence of rape in contravention of section 376 of the Penal Code. Therefore, as the learned trial judge himself put it, what remained for him to decide was only the question whether or not it was the appellant who had committed the acts of intercourse alleged to have taken place. For the purpose of this case, we take the same view as the learned trial judge that it is unnecessary to decide to what extent the girl's consent to the act of intercourse was obtained by the influence of her elder sister. He was satisfied and found as a fact that in December, 1963, as well as in May, 1964, the appellant had intercourse with the girl. We also have arrived at the same conclusion of fact.

Corroborative evidence is not necessarily restricted to the oral evidence of an independent witness. Corroboration can equally well be afforded by established facts and the logic of established facts sometimes speaks even more eloquently than words. We are of opinion that if, during the period of her elder sister's confinement, it was necessary for the girl to remain in her sister's house in order to help look after her sister's children, when the appellant's mother had to go to hospital again and the girl's services were again called for, it was more than probable that what she said was true and that she, in fact, went to assist her sister's family during the absence of the appellant's mother in hospital from April to May. It has not been suggested that this girl was in any way promiscuous; it was not suggested that she had any male friends, and it is equally clear that whatever might have been her state of mind towards the first act in December, she was more than a willing party in all the subsequent acts of intercourse with the appellant. We do not consider it necessary for the prosecution to indulge in a process of elimination when there was no suggestion that anybody else even remotely connected could have had intercourse with this girl. For the reasons above stated, we are entirely satisfied that the learned trial judge was right in convicting the appellant and his appeal on conviction is accordingly dismissed.

As regards sentence, in the first place, there is a very wide gulf between this case where, if the girl had been a little older, the accused would not have committed any offence and the other types of rape where violence was resorted to to overcome resistance. In the second place, the girl is unlikely to suffer any psychological after-effects. In the third place, as regards damage to her future prospects of marriage, we do not think there are any serious impediments to such prospects, were she to move to another locality with her family. We accordingly think that the term of three years' imprisonment was on the excessive side and substitute for it a sentence of 18 months' imprisonment.

Order accordingly.

Solicitors: *Cheang Lee & Ong.*

OTHMAN BIN AHMAD v. SINGAPORE TRACTION CO. LTD.

[F.C. (Tan Ah Tah Ag.C.J., Buttrose and Chua JJ. September 22, 1965]

[Singapore — Federal Court Civil Appeal No. 38 of 1965]

Negligence — Personal injuries — Quantum of damages — Damages for pain and suffering and loss of amenities — Loss of future earnings.

Damages — Leg — 1" shortening — Multiple injuries.

This was an appeal by the plaintiff against the award of damages (noted at [1965] 1 M.L.J. xxvi) made in an action brought by the plaintiff against the defendants for damages for personal injuries suffered by the plaintiff and caused by the negligence of the defendant's servant in driving a motor bus. The plaintiff suffered severe injuries to his left leg and these have left him with a deformed foot and short leg. Moreover the ankle and other joints in the foot were affected and showed